BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Implementation of the | ) | |
| Telecommunications Act of 1996: | ) | CC Docket No. 96-193 |
| | ) | |
| Reform of Filing Requirements | ) | |
| and Carrier Classifications | ) | |



# REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

ROBERT M. LYNCH
DURWARD D. DUPRE
MARY W. MARKS
JONATHAN W. ROYSTON

ONE BELL CENTER
ROOM 3520
St. Louis, Missouri 63101
(314) 235-2507

ATTORNEYS FOR
SOUTHWESTERN BELL TELEPHONE COMPANY

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## SUMMARY*

To comply with the 1996 Act, the Commission must eliminate all CAM filings other than a single annual CAM filing by each LEC. MCI and Sprint argue that the 60-day CAM filing requirement should be retained, but they fail to explain how more frequent CAM filings are consistent with the 1996 Act's requirement that the Commission allow annual CAM filings. Under their line of reasoning, Section 402(b)(2)(B) would not provide any regulatory relief at all.

Proposals by commenters such as Cincinnati Bell and NYNEX to merely streamline the 60-day CAM filings are not any closer to being consistent with Section 402(b)(2)(B) because, under such proposals, the Commission would still require multiple CAM filings per year. A more realistic alternative to the 60-day CAM filings would be to allow the LECs to consult informally with the Accounting and Audits Division if they wish to do so before implementing significant changes in their CAMs. This informal process should not be mandatory.

Teleport asks the Commission to clarify that LEC filing requirements do not apply to new LECs, or CLECs, that are entering the local exchange market, even if they exceed the $100 million revenue threshold. On the contrary, as written, several of the LEC filing requirements apply to all "local exchange carriers" whose annual operating revenue exceeds $100 million. These rules do not draw any distinctions between existing and new LECs. Instead, if the LEC reaches the $100 million threshold, then it becomes subject to the LEC filing requirements.

* The abbreviations used in this summary are the same as those used in the text of the Reply Comments.

Teleport claims that the distinction between incumbent LECs and CLECs in the 1996 Act requires this clarification of the LEC filing requirements. The 1996 Act is not the proper basis to clarify a pre-existing LEC filing requirement. However, in considering whether to amend the LEC filing requirements, unless these requirements are eliminated or streamlined for all LECs, the Commission should apply the same requirements to incumbent LECs and CLECs, subject only to the revenue threshold. The distinction between LECs and CLECs, on which Teleport relies, is for purposes of determining the scope of interconnection obligations, and is not pertinent to the scope of the LEC filing requirements.

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# REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company ("SWBT") hereby respectfully submits its Reply Comments to respond to certain comments filed in connection with the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding concerning cost allocation manual ("CAM") and ARMIS filing requirements.

## I. ANNUAL CAM FILING REQUIREMENT

MCI and Sprint urge the Commission to retain the 60-day CAM filing requirement for cost apportionment and time reporting procedure changes despite the requirement in the Telecommunications Act of 1996 (the "1996 Act") that the Commission permit annual CAM filings. MCI argues that the 60-day CAM filing requirement is consistent with the 1996 Act because "nothing in the Act limits the Commission's authority to scrutinize changes to LEC cost allocation procedures before they are implemented, when such scrutiny is required in order to guard against cross-subsidy."[1] However, MCI does not explain how more frequent CAM filings can be consistent with the 1996 Act's requirement that the Commission allow annual filings.

[1] MCI at 4.

MCI attempts to distinguish CAM filings that are for "information purposes" only from CAM filings that "must be reviewed prior to implementation" in order to justify treating the two types of filings differently under Section 402(b)(2)(B). However, the language of Section 402(b)(2)(B) does not draw any distinction between different types of CAM filings. Rather it applies to all CAM filings equally.

Sprint's reasoning is also unpersuasive. It states that "nothing in Section 402(b)(2)(B) . . . explicitly requires that the 60-day notice be eliminated."[2] Section 402(b)(2)(B) is, however, clear and explicit. Although it does not specifically cite the section of the Commission's Rules (Section 64.903(b)), the various Commission rulings on local exchange carriers' CAM filings and the accounting letter describing CAM filing procedures (RAO 19), the statute does describe the desired result: annual CAM filings. Under Sprint's line of reasoning, this provision of the 1996 Act would need to state explicitly that "the 60-day CAM filing requirement in Section 64.903(b) is hereby eliminated." If Sprint were correct that Section 402(b)(2)(B) is not sufficiently specific to eliminate the 60-day CAM filing requirement, then the provision would also not be sufficiently specific to eliminate the "quarterly" filings, given that the statute does not contain the word "quarterly." The absurdity of Sprint's argument is self-evident.

Proposals by commenters such as Cincinnati Bell and NYNEX to merely streamline the 60-day CAM filings by shortening the 60 days[3] or otherwise modifying the filing procedure are not any closer to being consistent with Section 402(b)(2)(B) because, under such proposals, the

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[2] Sprint at 2.

[3] Cincinnati Bell at 4; NYNEX at 2-3.

Commission would still require multiple CAM filings per year. NYNEX mainly proposes to shorten the 60 days to 15 days. However, such a proposal does not address the frequency of CAM filings, which is the focus of the 1996 Act requirement. Simply stated, these streamlining proposals do not come any closer to complying with the letter and spirit of the law than the two proposals in the NPRM.

A more realistic alternative would be to allow the LECs and the Accounting and Audits Division to engage in an informal cooperative process, as described in GTE's Comments or SWBT's initial Comments.[4] This informal cooperative process would not require any formal CAM filings other than a single annual CAM filing. Also, there would only be one public comment cycle on a LEC's CAM each year. The informal process suggested by SWBT in its initial Comments included an informal letter to the Accounting and Audits Division at the time of any significant changes informing it of those changes that occur prior to the date of the annual CAM filing. This informal process should not be codified in the rules, nor is it necessary to impose any mandatory notification requirements because it will be in the best interests of the LEC to inform the Accounting and Audits Division of significant changes in advance of the annual CAM filing.

## II. COMPETITIVE LOCAL EXCHANGE CARRIERS

Teleport questions the portion of the Regulatory Flexibility Analysis ("RFA") that acknowledges that the "proposed rules would also affect filing requirements for new LECs entering the local exchange market . . . to the extent such carriers' exceed the annual indexed

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[4] GTE at 1-3; SWBT at 5.

revenue threshold of $100M in operating revenue as adjusted upward by the rules adopted and proposed"[5] in the NPRM. Based upon the current rules, the RFA is correct. Teleport claims that the LEC filing requirements do not apply to competitive local exchange carriers ("CLECs") because the 1996 Act, and the Commission's local competition rules thereunder, make a "clear distinction between incumbent LECs and CLECs."[6]

Given that Teleport is arguing that the LEC filing requirements were never applicable to CLECs, the pertinent inquiry is whether the LEC filing rules as written applied to CLECs. The distinctions between incumbent LECs and CLECs in the 1996 Act are not pertinent to determining the original intent of the LEC filing rules. As written, several of the LEC filing requirements apply to all "local exchange carriers" whose annual operating revenue exceeds $100 million.[7] These rules do not draw any distinctions between existing and new LECs. Instead, if the LEC reaches the $100 million threshold, then it becomes subject to the LEC filing requirements. Teleport does not cite any authority indicating that CLECs are exempt from these LEC filing requirements. Therefore, the Commission cannot properly clarify that the existing

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[5] NPRM, ¶44.

[6] Teleport at 3.

[7] See 47 C.F.R. §§ 43.21(e) & (f), 43.22(a). Other filing requirements are applicable to "communications common carriers" with operating revenue of $100 million or more. See, e.g., 47 C.F.R. § 43.21(a). Certain filing requirements are only applicable to price cap LECs, but to the extent they continue at all, they should be equally applicable to all LECs, including CLECs. For example, any continuing service quality, infrastructure and facilities deployment reports should be required equally of all LECs so as not to competitively disadvantage any particular group of LECs. Besides, if there is any reason to continue monitoring the service quality of any LEC, then the service quality of all LECs, including CLECs, should be monitored.

LEC filing rules were never applicable to CLECs. It can, however, consider in this proceeding whether to continue applying the LEC filing requirements to CLECs.[8]

In considering whether to continue applying the LEC filing requirements to CLECs, SWBT submits that the Commission should apply the same requirements to incumbent LECs and CLECs, subject only to the revenue threshold. Of course, as SWBT explained in its Comments,[9] SWBT believes that these LEC filing requirements are largely unnecessary for LECs that are not subject to rate-of-return regulation, and thus, SWBT maintains that these filing requirements should be eliminated or substantially streamlined for all LECs, including CLECs. However, to the extent the Commission does not eliminate or streamline these LEC filing requirements and continues to apply them to LECs generally, they should be applicable to all LECs that meet the revenue threshold. The revenue threshold is the relevant criteria for determining whether the LEC filing requirements are necessary and should be the only criteria used.

Distinctions between incumbent LECs and CLECs in the 1996 Act, to which Teleport refers, do not require that different accounting requirements be applied to incumbent LECs and

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[8] Teleport claims that the Commission must initiate a separate rulemaking in order to apply the LEC filing requirements to CLECs. However, given that these filing requirements already apply to CLECs, a separate rulemaking would not be necessary to confirm the applicability of these rules or to consider modifications. The Commission took similar action when it revised the rules relating to notification of service disruptions in CC Docket No. 91-273. In that proceeding the Commission expressly applied the outage reporting rule to any "competitive access provider" whose outage met the 30,000 line threshold or other outage reporting criteria. See Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions, CC Docket No. 91-273, Second Report and Order, 9 FCC Rcd 3911, 3945 ¶80 (1994).

[9] SWBT at 5.

CLECs. In actuality, the 1996 Act distinction to which Teleport refers is between all LECs versus a subset consisting of incumbent LECs. Further, this distinction is for purposes of determining the scope of interconnection obligations that apply to a particular LEC. All LECs have a short list of five interconnection obligations under Section 251(b); whereas, incumbent LECs have obligations in six additional areas under Section 251(c).[10] This distinction for interconnection obligation purposes does not have any direct relationship to the scope of any continuing LEC accounting and reporting requirements. More pertinent to such accounting and reporting requirements are the provisions of the 1996 Act that require it to forbear from applying rules that are no longer necessary in the public interest.[11] These provisions require that the Commission consider eliminating, or at least streamlining, the LEC accounting and reporting requirements for all LECs, including CLECs, even if they exceed the revenue threshold.[12]

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[10] Compare 47 U.S.C. §251(b) with 47 U.S.C. §251(c).

[11] See, e.g., 47 U.S.C. §§10, 11.

[12] Teleport cites paragraphs 1241-48 of the First Report and Order in CC Docket No. 96-98 for the proposition that CLECs should not be subject to regulatory requirements intended for incumbent LECs. Of course, the LEC filing requirements were intended for all LECs, not only for incumbent LECs. In any event, in paragraphs 1241-1248, the Commission was considering whether a state regulatory commission could require a non-incumbent LEC to comply with one or more of the "Additional Obligations of Incumbent Local Exchange Carriers" listed in Section 251(c)(1)-(6). The Commission's decision that a state regulatory commission could not impose obligations in these six areas on non-incumbent LECs does not have any bearing on the applicability of LEC filing requirements that are unrelated to interconnection. Further, paragraphs 1241-1248 certainly did not automatically exempt LECs that do not fit the 1996 Act's definition of "incumbent LEC" from pre-existing filing requirements that applied to LECs generally.

Teleport claims that incumbent LECs need to be monitored "to determine whether they are engaging in illegal cross-subsidization between their regulated and unregulated services."[13] Under current and planned price cap regulation, a LEC that is not subject to rate-of-return regulation does not have any realistic ability or incentive to subsidize nonregulated services at the expense of regulated service customers, and thus, a number of the LEC filing requirements are not necessary for even incumbent LECs. However, to the extent the Commission determines that it will continue to require LEC filings related to monitoring of cross-subsidy, those concerns should be equally applicable to LECs and CLECs that exceed the revenue thresholds.

SWBT agrees with commenters urging the Commission to increase the revenue threshold to a substantially higher level, such as USTA's suggestion of $250 million.[14] SWBT also believes that the revenue threshold should be based only on the carrier's regulated revenues. This change would minimize the burden of the Commission's filing requirements on those entities that have made only relatively small entries into the local exchange market.

## III. CONCLUSION

To comply with the 1996 Act, the Commission must eliminate all CAM filings other than a single annual CAM filing by each LEC. Other alternatives that merely attempt to streamline multiple CAM filing per year should be rejected. Instead, informal consultation with the Commission's accounting staff should suffice between annual CAM filings.

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[13] Teleport at 4.

[14] USTA at 2-5 & n.6.

Any filing requirements adopted herein should apply equally to all LECs that meet the revenue threshold, including CLECs. However, the Commission should also consider streamlining these filing requirements for all LECs.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Jonathan W. Royston

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
Jonathan W. Royston

Attorneys for
Southwestern Bell Telephone Company

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-2507

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CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Reply Comments Of Southwestern Bell Telephone Company" in CC Docket No. 96-193 has been filed this 5th day of November, 1996 to the Parties of Record.

Katie M. Turner

November 5, 1996

INTERNATIONAL TRANSCRIPTION SERVICE INC
2100 M STREET NW
ROOM 140
WASHINGTON DC 20037

ERNESTINE CREECH
COMMON CARRIER BUREAU
ACCOUNTING AND AUDITS DIVISION
2000 L STREET NW SUITE 257
WASHINGTON DC 20554

MARY MCDERMOTT
LINDA KENT
CHARLES D COSSON
KEITH TOWNSEND
UNITED STATES TELEPHONE ASSOC
1301 H STREET NW SUITE 600
WASHINGTON DC 20005

TELEPORT COMMUNICATIONS GROUP INC
TERESA MARRERO
TWO TELEPORT DRIVE
STATEN ISLAND NY 10311

CHRISTOPER J WILSON
JACK B HARRISON
FROST & JACOBS
2500 PNC CENTER
201 EAST FIFTH STREET
CINCINNATI OHIO 45202

THOMAS E TAYLOR
CINCINNATI BELL TELEPHONE COMPANYU
201 EAST FOURTH STREET 6TH FLOOR
CINCINNATI OHIO 45202

NYNEX TELEPHONE COMPANY
CAMBELL L AYLING
1111 WESTCHESTER AVENUE
WHITE PLAINS NY 10604

MCI TELECOMMUNICATIONS CORP
ALAN BUZACOTT
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006

SPRINT CORPORATION
JAY C KEITHLEY
1850 M STREET NW
SUITE 1100
WASHINGTON DC 20036

SPRINT CORPORATION
CRAIG T SMITH
P O BOX 11315
KANSAS CITY MO 64112

BELLSOUTH CORPORATION AND
BELLSOUTH TELECOMMUNICATIONS INC
WILLIAM B BARFIELD
M ROBERT SUTHERLAND
SUITE 1700
1155 PEACHTREE STREET NE
ATLANTA GA 30309-3610

GTE SERVICE CORPORATION
RICHARD MCKENNA HQE03J36
P O BOX 152092
IRVING TX 75015-2092

GTE SERVICE CORPORATION
GAIL L POLIVY
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036

AMERITECH
ALAN N BAKER
2000 WEST AMERITECH CENTER DRIVE
HOFFMAN ESTATES IL 60196

PACIFIC BELL AND NEVADA BELL
MARLIN D ARD
APRIL J RODEWALD-FOUT
LUCILLE M MATES
140 NEW MONTGOMERY STREET RM 1526
SAN FRANCISCO CA 94105

PACIFIC BELL AND NEVADA BELL
MARGARET E GARBER
1275 PENNSYLVANIA AVE NW
WASHINGTON DC 20004

ANCHORAGE TELEPHONE UTILITY
PAUL J BERMAN
ALANE C WEIXEL
COVINGTON & BURLING
1201 PENNSYLVANIA AVE NW
P O BOX 7566
WASHINGTON DC 20004-7566

BELL ATLANTIC
LAWRENCE W KATZ
1320 NORTH COURT HOUSE ROAD
EIGHTH FLOOR
ARLINGTON VA 22201

U S WEST INC
ROBERT B MCKENNA
SUITE 700
1020 19TH STREET NW
WASHINGTON DC 20036

PUERTO RICO TELEPHONE COMPANY
JOE D EDGE
GEORGE GALT
DRINKER BIDDLE & REATH
901 FIFTEENTH STREET NW
WASHINGTON DC 20005